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Attorney for Material Witness

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

(Honorable Anthony J. Battaglia)

UNITED STATES OF AMERICA,	)	Criminal Case No. 08cr1811-WQH
)	
Plaintiff,)	
)	
v.	)	NOTICE OF MOTION AND MOTION
	)	FOR VIDEOTAPE DEPOSITION AND
	)	RELEASE OF MATERIAL WITNESS:
ANGEL RIOS,	)	RAFAEL CORTES-CORTES
)	
	)	HRG DATE: 06/24/2008
Defendant.	)	TIME: 9:30 a.m.
	)	CRTRM: A, 1st Floor
	)	JUDGE: Anthony J. Battaglia

TO UNITED STATES ATTORNEY KAREN P. HEWITT, ASSISTANT UNITED STATES ATTORNEY PETER MAZZA; AND TO TIMOTHY R. GARRISON, FEDERAL DEFENDERS, ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE that on June 24, 2008, at 9:30 a.m., counsel will move this Court for an order to take the video deposition of material witness, Rafael Cortes-Cortes, and for his immediate release thereafter.

MOTION

Material witness, Rafael Cortes-Cortes, through his counsel, Alan E. Ferguson, and pursuant to Federal Rules of Criminal Procedure, Rule 15, 18 U.S.C., §3144; and 18 U.S.C., §3142, hereby moves this Court for an order to take his deposition by videotape, and release him at the conclusion

1 of the deposition.

2 This motion is based on the notice of motion, declaration of counsel, the memorandum of
3 points and authorities attached and filed herewith, the records of the above-titled case, and all
4 matters submitted to the court prior to the determination of this motion.

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6 Dated: June 12, 2008

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By: / S / Alan E. Ferguson
ALAN E. FERGUSON
Attorney for the Material Witness

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 (Honorable Anthony J. Battaglia)

11 UNITED STATES OF AMERICA,	)	Criminal Case No. 08cr1811-WQH
)	
12 Plaintiff,)	
	)	DECLARATION OF ALANE.
13 vs.	)	FERGUSON IN SUPPORT OF
	)	MATERIAL WITNESSES MOTION
14 ANGEL RIOS,	)	FOR A VIDEOTAPE DEPOSITION
)	
15 Defendant.	)	HRG DATE: 06/24/2008
	)	TIME: 9:30 a.m.
16	)	CRTRM: A, 1st Floor
_____	)	JUDGE: Anthony J. Battaglia
17)	

18 I the undersigned, declare as follows:

19 1. My name is Alan E. Ferguson, and I am the attorney of record for Rafael Cortes-Cortes,
20 the material witness in the above-captioned matter. I am an attorney duly licensed to practice law
21 in the State of California and am admitted to practice before the United States District Court for the
22 Southern District of California.

23 2. On May 21, 2008, I was appointed to represent the material witness in the
24 above-captioned matter. As a Material Witness attorney, one of my primary responsibilities is to
25 help arrange the release of the material witness from the custody of the U.S. Marshal and BICE as
26 soon as practicable. To that end, I immediately conducted interviews with the Material Witness,
27 through a certified Spanish language interpreter to explain why she was being held and under what
28 conditions she could be released. I informed the Material Witness that the most expedient way to

1 be released is by having a personal surety post a court approved appearance bond. I explained that
2 a personal surety would have to agree to sign a \$5,000.00 appearance bond, post \$500.00 cash with
3 the court, and agree to allow the Material Witness to stay with the surety or a family member
4 pending final disposition of the case. Unfortunately, I have been unable to locate any possible surety
5 for this Material Witness, and am now relegated to filing this motion.

6 3. I am not aware or have not been informed of any reason in this case why the Material
7 Witness testimony can not be adequately secured by deposition by either the government or the
8 defendant's attorney. To the contrary, compelling reasons exists for the release of the material
9 witness as continued detention will cause a hardship on the material witness.

10 4. The Material Witness is willing to discuss everything he knows about this case with both
11 the defense and government investigators. The fact is, however, there are only a few facts relevant
12 to this case which the material witness is competent to testify: i.e. (a) his citizenship, (b) his
13 confinement in a closed compartment, and (c) whether the witness agreed to pay anyone. According
14 to preliminary interviews, all of the facts relevant to this case in the material witness' knowledge took
15 place over a very short period of time.

16 5. I explained the general procedure for videotape depositions to the witness and explained
17 that, if he were released after the deposition, he may have to return to testify at trial if subpoenaed
18 by the government or defendant. The witness indicated he is willing to return if arrangements for
19 his legal re-entry could be made and travel expenses provided.

20 I declare under penalty of perjury, under the laws of the United States of America, that the
21 foregoing is true and correct of my own personal knowledge, except as to those matters stated to be
22 based upon information and belief, and as to those matters, I am informed and believe them to be
23 true and correct.

24 Executed on June 12, 2008, in San Diego, California.

25 Respectfully Submitted,

26
27 / S / Alan E. Ferguson
28 ALAN E. FERGUSON
Attorney for the Material Witness

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 (Honorable Anthony J. Battaglia)

11 UNITED STATES OF AMERICA,	)	Criminal Case No. 08cr1811-WQH
)	
12 Plaintiff,	)	POINTS AND AUTHORITIES IN
	)	SUPPORT OF MATERIAL WITNESS
13 vs.	)	MOTION FOR VIDEOTAPE DEPOSITION
	)	AND REQUEST FOR STATEMENT OF
14 ANGEL RIOS,	)	REASONS IN SUPPORT OF CUSTODY
)	
15 Defendant.	)	HRG DATE: 06/24/2008
	)	TIME: 9:30 a.m.
16	)	CRTRM: A, 1st Floor
_____	)	JUDGE: Anthony J. Battaglia
17		

18 TO UNITED STATES ATTORNEY KAREN P. HEWITT, ASSISTANT UNITED
19 STATES ATTORNEY PETER MAZZA; AND TO TIMOTHY R. GARRISON, FEDERAL
20 DEFENDERS, ATTORNEY FOR DEFENDANT:

21 The Material Witness, Rafael Cortes-Cortes, (hereafter "Material Witness") by and through
22 his counsel, Alan E. Ferguson, submits the following Memorandum of Points and Authorities in
23 support of his motion to take the videotaped deposition.

24 I.

25 INTRODUCTION

26 On or about May 20, 2008, the Material Witness was detained by U.S. Border Patrol Agents
27 in connection with the arrest of the above captioned Defendant. The defendant has been charged
28 with bringing in illegal aliens for financial gain and without presentation, and aiding and abetting,

1 in violation of Title 8 U.S.C. §1324(a)(2)(B)(ii), 8 U.S.C. §1324(a)(2)(B)(iii), and 18 U.S.C. §2;
2 and therefore the Material Witness has been detained as a Material Witness under 8 U.S.C. § 1227
3 (d).

4 The Material Witness is currently being held in U.S. Marshall custody in San Diego,
5 California. After repeated efforts to secure a surety for this material witness, it has been determined
6 that no possible surety is either willing, or able to post a bond for him to allow for his release from
7 custody during the pendency of this case.

8 It is unnecessary to keep the Material Witness in the United States because his testimony can
9 be preserved through the use of a videotaped deposition. The Material Witness therefore requests
10 a court order that her testimony be preserved through the use of videotape depositions and, thereafter,
11 that he be allowed to return to Mexico.

12 II.

13 DEPOSITION IS MANDATED BY STATUTE

14 A. *18 USC. § 3144*

15 Congress specifically enacted a statute to deal with the issue presented in this case, i.e.,
16 material witnesses who remain incarcerated owing solely to their inability to secure bond. In
17 unmistakably plain language, Congress outlawed prolonged incarceration of such persons without
18 substantial justification. "No material witness may be detained because of inability to comply with
19 any condition of release if the testimony of such witness can be secured by deposition, and if further
20 detention is not necessary to prevent a failure of justice." 18 U.S.C. § 3144. "Upon such a showing,
21 the district court must order [the witness'] deposition and prompt release." *Torres-Ruiz v. United*
22 *States District Court for the Southern District of California*, 120 F.3d 933, 935 (9th Cir. 1997)
23 (emphasis in original).

24 B. *Federal Rule of Criminal Procedure 15*

25 A material witness also may secure his or her own release by filing a written motion in the
26 district court requesting a deposition and release. Fed. R. Crim. P. 15(a). Under such circumstances,
27 "[i]f the deposition would prove admissible over any objection under the Confrontation Clause of
28 the United States Constitution or the Federal Rules of Evidence, then the material [witness] *must*

1 be deposed rather than detained." *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 413 (5th Cir. 1992)
2 (emphasis added).

3 Whenever due to exceptional circumstances of the case it is in the interests of justice
4 that the testimony of a prospective witness of a party be taken and served for use at
5 trial, the court may upon motion of such party and notice to parties order that the
6 testimony of such witness be taken by deposition "If a witness is detained
7 pursuant to section 3144 of title 18, United States Code, the court on written motion
8 of the witness and upon notice to the parties may direct that the witness' deposition
9 be taken. After the deposition has been subscribed the court may discharge the
10 witness." *Aguilar-Ayala*, 973 F.2d at 413 (quoting Fed. R. Crim. P. 15(a)).

11 Prolonged incarceration of the witnesses solely because of their inability to secure bond thus
12 violates the clearly stated intent of Congress and straightforward rulings by the Court of Appeals
13 prohibiting such practices. "[I]t is clear from a conjunctive reading [of Rule 15(a)] with § 3144 that
14 the discretion to deny the motion is limited to those instance in which the deposition would not serve
15 as an adequate substitute for the witness' live testimony: that a failure of justice would ensue were
16 the witness released. Absent a failure of justice, the witness must be released." *Torres-Ruiz*, 120
17 F.3d 933, 935 (citing *Aguilar-Ayala*, 973 F.2d at 413 (internal citations and internal quotations
18 omitted); see also *United States v. Rivera*, 859 F.2d 1204 (4th Cir. 1988).

19 C. ***Defendant Has Not Met Her Burden to Defeat the Motion for Video Deposition***

20 To defeat a motion for video deposition of the material witness, the burden is on the
21 opposing party to show admission of deposition testimony will result in a "failure of justice." 18
22 U.S.C. § 3144; *Torres-Ruiz*, 120 F.3d 933, 935. To meet this burden, defendant must make a
23 plausible showing the witness' testimony would be both *material and favorable to his defense*. See
24 *United States v. Valenzuela-Bernal*, 458 U.S. 858, 866 (9182).

25 In *Valenzuela-Bernal*, the defendant was charged with transporting an illegal alien. The
26 government detained the illegal alien as a material witness (Witness No. 1) but deported two' other
27 witnesses (Witnesses Nos. 2 and 3)(also illegal aliens) *before* defendant was able to interview them.
28 Defendant appealed, claiming deportation of Witnesses Nos. 2 and 3 deprived him of the
opportunity to determine whether their testimony would aid his defense. According to the Supreme
Court, even though defendant knew what Witnesses 2 and 3 might have said to him to indicate
whether Witness No. 1 had legal status to be present in this country, defendant failed to show how

1 the deported witnesses' testimony would have been helpful to his defense. *Valenzuela-Bernal*, 458
2 U.S. at 873.

3 [I]t should be remembered that [defendant] was present throughout the commission
4 of this crime. No one knows better than he what the deported witnesses actually said
5 to him, or in his presence, that might bear upon whether he knew that [Witness No.
6 1] was an illegal alien who had entered the country within the past three years. And,
7 in light of the actual charge made in the indictment, it was only the status of [Witness
8 No. 1] which was relevant to the defense. [Witness No. 1], of course, remained fully
9 available for examination by the defendant and his attorney. We thus conclude that
10 the [defendant] can establish no Sixth Amendment violation without making some
11 plausible explanation of the assistance he would have received from the testimony
12 of the deported witnesses. *Valenzuela-Bernal*, 458 U.S. at 871.

13 The Supreme Court's reasoning applies with even greater force in this case. In *Valenzuela-*
14 *Bernal*, the witnesses were deported before defendant had the opportunity to interview them. Here,
15 defendant has the opportunity to interview the material witness while he is incarcerated, and the
16 opportunity is extended to the defense. As of this date, defendant has produced no evidence, nor has
17 he made any showing the material witness has material information helpful to his defense. In short,
18 defendant has made no showing of a failure of justice. Consequently, the material witness must be
19 deposed and released.

16 II.

17 EXCEPTIONAL CIRCUMSTANCES

18 MANDATE DEPOSITION AND RELEASE

19 As a prerequisite to an order for a deposition, the court must find exceptional circumstances
20 where the interests of justice require taking and preserving the testimony of a prospective witness
21 for possible use at trial. Fed. R. Crim. P. 15(a). Such a finding is clear and distinct from the
22 prerequisites of witness unavailability and material testimony that control the admission of a
23 deposition into evidence at trial. See *United States v. Sines*, 761 F.2d 1434, 1439 (9th Cir. 1985).
24 As shown herein, this witness has met his burden to show exceptional circumstances sufficient to
25 merit grant of his motion for deposition and release.

26 A. *Prolonged Incarceration Is An Exceptional Circumstance*

27 In a case originating in the Southern District of California, the Ninth Circuit issued a writ of
28 mandamus ordering video depositions for material witnesses who were unable to secure bond “in

1 a straightforward and uncomplicated alien smuggling prosecution." *Torres-Ruiz*, 120 F.3d 933, 935.
2 In another case where the material witnesses had been in custody for a mere *three weeks*, the Fourth
3 Circuit held continued incarceration with no prospective surety available to post bond was an
4 exceptional circumstance justifying deposition and release of the material witnesses. *United States*
5 *v. Rivera*, 859 F.2d 1204, 1205 (4th Cir. 1988). As the Rivera Court observed, "humanitarian
6 considerations alone demand that something be done to release [the material witnesses] from
7 incarceration, when their only purpose for being incarcerated is to be witnesses. *And whether they*
8 *voluntarily flee after their depositions have been taken or whether the INS deports them back to*
9 *their countries of origin is beside the point.*" *Rivera*, 859 F.2d 1205 (emphasis added).

10 The circumstances in this case are similar to *Torres-Ruiz* and *Rivera*, as the witness
11 continues to be held for no purpose other than to be a witness. Because a deposition serves as an
12 adequate alternative to his continued incarceration, this witness has "an overriding liberty interest
13 in not being detained as a material witness when the deposition procedure serves as an adequate
14 alternative to prolonged detention." *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 419-420 (5th Cir. 1992).
15 Under the standards articulated by the Court of Appeals, prolonged incarceration of a witness merely
16 because of the inability to secure bond is an exceptional circumstance that mandates an immediate
17 deposition and release.

18 III.

19 Deposition Preserves Defendants' Rights

20 A. *Deposition Preserves Defendants' Sixth Amendment Right to Confrontation*

21 Under ideal circumstances, the material witness would be deposed and released and would
22 subsequently return for defendants' trial. The Office of the United States Attorney in fact employs
23 well-established procedures whose goal is to ensure just such a result. Prior to release, the
24 government is required to serve the material witness with a subpoena for the trial date and a travel
25 fund advance letter. Thus, under ideal circumstances, the material witness would return for trial and
26 questions about preserving defendants' rights to confront and cross-examine the material witness
27 would be moot.

28 / / /

1 Even if the material witness does not return for trial, however, the material witness deposition
2 will be admissible in lieu of live testimony. See *United States v. Rivera*, 859 F.2d 1204, 1205 (4th
3 Cir. 1988). Admission of prior-recorded testimony by a witness who is unavailable for trial has in
4 fact been upheld for more than a century. In 1895, the Supreme Court held admission of testimony
5 given at a defendant's first trial by a witness who died before the second trial did not violate the
6 confrontation clause. *Mattox v. United States*, 156 U.S. 237 (1895). Since that time, courts have
7 consistently upheld the principle that prior-recorded testimony later admitted at trial does not violate
8 a defendant's Sixth Amendment confrontation rights so long as: (1) there is some exceptional
9 circumstance where, in the interests of justice, it is necessary to take and preserve testimony outside
10 the court; (2) the prior testimony was given at a hearing; (3) an authorized person put the witness
11 under oath; (4) defendant had the right to be present; (5) defendant was represented by counsel who
12 was given a complete and adequate opportunity to cross-examine the witness; and (6) the witness
13 meets the criteria for unavailability. See 18 U.S.C. § 3503; Fed.R. Civ. Proc., Rules 28 and 30; Fed.
14 R. Evid. 804(a); see also *California v. Green*, 399 U.S. 149, 163-164 (1970); *Torres-Ruiz v. United*
15 *States District Court for the Southern District of California*, 120 F.3d 933 (9th Cir. 1997);
16 *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 413 (5th Cir. 1992); *United States v. King*, 552 F.2d 833,
17 841-843 (9th Cir. 1976).

18 As shown above, this case presents exceptional circumstances where the interests of justice
19 mandate taking and preserving the material witness' testimony outside the court, i.e., by video
20 deposition. Defendant's rights under the confrontation clause are preserved by the statutory
21 requirements for a deposition, including the presence of a person authorized to put the witness under
22 oath, defendants' rights to be present, defendants' rights to be represented by counsel, and defendants'
23 rights to completely and adequately cross-examine the witness. See Fed.R.Civ.P. 28 and 30.
24 Moreover, these procedural requirements provide sufficient indicia of reliability to afford the trier
25 of fact a satisfactory basis for evaluating the truth of the prior statement, further protecting
26 defendant's rights under the confrontation clause. See *Dutton v. Evans*, 400 U.S. 74, 89 (1970);
27 *California v. Green*, 399 U.S. 149, 161 (1970).

28 / / / /

1 Finally, if the material witness fails to return for trial the deposition would be admissible, as
2 the material witness would meet the requirements for unavailability. In the context of this case, an
3 unavailable witness is one who is out of the United States, providing the absence of the witness was
4 not procured by the party offering the deposition, or a witness whose attendance cannot be procured
5 by subpoena 18 U.S.C. § 3503, subd. (f); see also Fed. R. Crim. Proc., Rule 15; Fed. R. Evid. 804(a).
6 Where a material witness has left the United States voluntarily or even, by forced deportation, the
7 witness' later absence from trial does not violate defendant's rights under the confrontation clause
8 provided the government makes a reasonable effort to assure the witness' attendance at trial.
9 *Aguilar-Ayala v. Ruiz*, 973 F.2d at 417 (citing *United States V. Eufracio-Torres*, 890 F.2d 266, 270
10 (10th Cir. 1989); see also *United States v. Rivera*, 859 F.2d at 1205.

11 Before the material witnesses in *Eufracio-Torres* were forcibly deported, the government,
12 using procedures similar to those presently employed in the Southern District of California, "served
13 them with trial subpoenas, instructed them on how to return for trial and how to obtain the necessary
14 travel funds." *Eufracio-Torres*, 890 F.2d at 270. Although the witnesses did not appear for trial,
15 the Court of Appeals held their deposition testimony was admissible under such circumstances.
16 Where "the government has exhausted reasonable effort to assure that the witness will attend trial
17 So long as the government has employed reasonable measures to secure the witness' presence
18 at trial, the fact that the witness has nevertheless failed to appear will not preclude the admission of
19 deposition testimony. Such a witness will be deemed 'unavailable' and the deposition is admissible
20 over the defendant's Confrontation Clause and hearsay objections." *Aguilar-Ayala*, 973 F.2d at 417
21 (quoting *Ohio v. Roberts*, 448 U.S. 56, 65 (1980)); see also Fed. R. Evid. 804(a).

22 Thus, even if the United States Attorney's reasonable and well-established procedures fail
23 to obtain the material witness' attendance at trial, statutory procedures for the taking of deposition
24 preserve defendant's Sixth Amendment confrontation rights, and would be admissible at trial.

25 **B. *Deposition Preserves Defendants' Sixth Amendment Right to Compulsory Process***

26 "The only recent decision of this Court dealing with the right to compulsory process
27 guaranteed by the Sixth Amendment suggests that more than mere absence of testimony is necessary
28 to establish a violation of the right." *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982)

(witnesses deported *before* defendant interviewed them). Indeed, the Sixth Amendment does not by its terms grant to a criminal defendant the right to secure the attendance and testimony of any and all witnesses; rather "it guarantees him 'compulsory process for obtaining witnesses *in his favor*.'" *Id.*, quoting U.S. Const., Amdt. 6 (emphasis added). Defendant cannot establish a violation of his constitutional right to compulsory process merely by showing deportation of the witness deprived him of his testimony. See *Valenzuela-Bernal*, 458 U.S. at 867, "[He] must at least make some plausible showing of how his testimony would have been both *material and favorable* to [his] defense." *Id.* (emphasis added); see also Fed. R. Crim. Proc., Rule 17(b) (requiring Government to subpoena witnesses on behalf of indigent defendants "upon a satisfactory showing . . . that the presence of the witness is necessary to an adequate defense.").

In this case, the material witness has been in custody since May 20, 2008. Since his arrest, the material witness has been available for interview by the defense and the Assistant United States Attorney, who have had the opportunity to ascertain the substance of any testimony the material witness might provide at trial. Because material witness testimony can be adequately preserved by video deposition and they are subject to the subpoena power of this court, further detention is not necessary to prevent a failure of justice.

Moreover, a guarantee from the government that the material witness will return for trial is not a prerequisite for an order for video deposition. The government is required only to use reasonable means to insure the appearance of the material witness. See *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 417 (citing *United States v. Eufracio-Torres*, 890 F.2d 266, 270 (10th Cir. 1989)). "We gather from these cases that deposition testimony is admissible only if the government has exhausted reasonable efforts to assure that the witness will attend trial. The ultimate success or failure of those efforts is not dispositive. So long as the government has employed reasonable measures to secure the witness' presence at trial, the fact that the witness has nevertheless failed to appear will not preclude the admission of deposition testimony. Such a witness will be, deemed 'unavailable.'" *Aguilar-Ayala* at 417-418 (citing *Ohio v. Roberts*, 488 U.S. 56, 65, (1980)). Because material witness testimony can be adequately preserved by video deposition and she is subject to the subpoena power of this court, defendants' rights to compulsory process are protected and the court

1 must order the deposition and release of the material witness.

2 **C. *Deposition Preserves Defendants' Fifth Amendment Right to Due Process***

3 "Due process guarantees that a criminal defendant will be treated with that fundamental
4 fairness essential to the very concept of justice. In order to declare a denial of it we must find that
5 the absence of that fairness fatally infected the trial; the acts complained of must be of such quality
6 as necessarily prevents a fair trial." *Valenzuela-Bernal*, 488 U.S. at 871, quoting *Lisenba v.*
7 *California*, 314 U.S. 219, 236 (1941). In another context, the Court held that instances where the
8 government withholds evidence required by statute to be disclosed constitute due process violations
9 only when they "so infect the fairness of the trial as to make it 'more a spectacle or trial by ordeal
10 than disciplined contest.'" *Valenzuela-Bernal* at 871, quoting *United States v. Augenblick*, 393 U.S.
11 349, 356 (1969) (citations omitted). For there to be a due process violation by release of the
12 material witness in this case, defendant must provide "some explanation of how his/her testimony
13 would have been favorable and material." Id.

14 **CONCLUSION**

15 Based on the discussion above, witness Rafael Cortes-Cortes, respectfully moves the Court
16 for an order requiring his video deposition be taken as soon as possible, and for his immediate
17 release from custody upon conclusion of the deposition.

20 Dated: June 12, 2008

By: / S / Alan E. Ferguson
ALAN E. FERGUSON
Attorney for the Material Witness

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2 Attorney at Law
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5 Attorney for the Material Witness
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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
(Honorable Anthony J. Battaglia)

9 UNITED STATES OF AMERICA,) Criminal Case No. 08cr1811-WQH
10)
Plaintiff,) DECLARATION OF SERVICE
11 v.)
12 ANGEL RIOS,) Persons Served: PETER MAZZA, AUSA
TIMOTHY R. GARRISON, F.D.
13 Defendant.) Date Served: June 12, 2008

14 I, the undersigned declare under penalty of perjury that I am over the age of eighteen years
15 and not a party to this action; that I served the above named person the following documents:

16 NOTICE OF MOTION AND MOTION FOR MATERIAL WITNESS DEPOSITION; POINTS
17 AND AUTHORITIES IN SUPPORT OF MATERIAL WITNESS VIDEOTAPED DEPOSITION;
18 DECLARATION OF ALAN E. FERGUSON IN SUPPORT THEREOF; AND THE PROPOSED
19 ORDER FOR VIDEO DEPOSITION, in the following manner:

20 1) X By e-filing the documents with the Southern District Court via CM/ECF.
21

22 Executed on June 12, 2008 at San Diego, California.
23

24 / S / Alan E. Ferguson
ALAN E. FERGUSON
25 Attorney for the Material Witness
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27
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